Office - Supreme Court, U.S.
FILED
MAY 11 1984
ALEXANDER L. STEVAS,

No. 83-802

In the Supreme Court of the United States

OCTOBER TERM, 1983

BURLINGTON NORTHERN RAILROAD COMPANY, ET AL.,
PETITIONERS

v.

C. MICHAEL LENNEN, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

REX E. LEE
Solicitor General

RICHARD K. WILLARD
Acting Assistant Attorney General

PAUL M. BATOR
Deputy Solicitor General

MARK I. LEVY
Assistant to the Solicitor General

ANTHONY J. STEINMEYER
BARBARA C. BIDDLE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

JIM J. MARQUEZ
General Counsel

KENNETH N. WEINSTEIN
Attorney

Department of Transportation
Washington, D.C. 20590

JOHN M. MASON
Chief Counsel

GRADY C. COTHEN, JR.
Attorney

Federal Railroad Administration
Washington, D.C. 20590

QUESTION PRESENTED

Whether, in a case alleging that a state has overvalued railroad property for ad valorem tax purposes, the prohibition against discriminatory state taxation of railroads in Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. (Supp. V) 11503, is limited to purposeful overvaluation with discriminatory intent.

TABLE OF CONTENTS

	Page
Statement	1
Argument	9
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Alabama Great Southern R.R. v. *Eagerton*, 633 F.2d 1036 5

Arlington Heights v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 ..... 13, 15

Atchison, T. & S.F. Ry. v. *Lennen*, 552 F. Supp. 1031, aff'd in part and rev'd in part, Nos. 82-1873, 82-1878, 82-1891 (10th Cir. Apr. 27, 1984) 3, 4, 5, 6

Clinchfield R.R. v. *Lynch*, 527 F. Supp. 784, 700 F.2d 126 ..... 4, 5, 16

Ogilvie v. *State Board of Equalization*, 657 F.2d 204, cert. denied, 454 U.S. 1086 5

Personnel Administrator v. *Feeney*, 442 U.S. 256 .. 15

Southern Ry. v. *State Board of Equalization*, 715 F.2d 522, cert. denied, No. 83-886 (Mar. 19, 1984) 5, 16

Weinberger v. *Catholic Action*, 454 U.S. 139 13

Statutes and regulations:

Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. (Supp. V) 11503 (recodification of Section 306), Pub. L. No. 94-210, 90 Stat. 54:

§ 306, 49 U.S.C. (Supp. V) 11503 ..... *passim*

§ 306(1), 49 U.S.C. (Supp. V) 11503(b) 3, 13, 14

§ 306(1)(c), 49 U.S.C. (Supp. V) 11503(b)(3) 5

§ 306(1)(d), 49 U.S.C. (Supp. V) 11503(b)(4) 13, 14

§ 306(2)(b), 49 U.S.C. (Supp. V) 11503 note .. 15

Statutes and regulations—Continued: Page

§ 306(2)(c), 49 U.S.C. (Supp. V) 11503(c).. 4, 15
§ 306(2)(d), 49 U.S.C. (Supp. V) 11503(c)..4, 10, 16
§ 306(2)(e), 49 U.S.C. (Supp. V) 11503(c).... 4
Tax Injunction Act, 28 U.S.C. 1341 1

Miscellaneous:

H.R. Rep. 94-725, 94th Cong., 1st Sess. (1975)..... 14, 16
S. Rep. 1483, 90th Cong., 2d Sess. (1968)..... 15
S. Rep. 91-630, 91st Cong., 1st Sess. (1969).....2, 3, 4, 11, 14, 15, 16
S. Rep. 94-499, 94th Cong., 1st Sess. (1975)..... 2

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-802

BURLINGTON NORTHERN RAILROAD COMPANY, ET AL., PETITIONERS

v.

C. MICHAEL LENNEN, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Pub. L. No. 94-210, 90 Stat. 54, recodified at 49 U.S.C. (Supp. V) 11503, prohibits discrimination by states in the taxation of rail transportation property. Section 306 also confers jurisdiction on federal district courts, without regard to the amount in controversy or the citizenship of the parties, to enjoin violations of its provisions notwithstanding the Tax Injunction Act, 28 U.S.C. 1341.

In passing the 4R Act, Congress recognized the "depressed * * * financial performance" of railroads

and the "decline" in their fiscal condition. S. Rep. 94-499, 94th Cong., 1st Sess. 2 (1975). It noted that "[e]ight major carriers in the Northeast and Midwest are bankrupt; several elsewhere in the country are in precarious financial condition and one is bankrupt" (*id.* at 3). Furthermore, Congress found that "[t]he importance of railroads to our Nation's economy cannot be overemphasized" (*id.* at 4). Accordingly, the 4R Act was designed "to promote the revitalization of the railroad industry in the United States" (*id.* at 1).

Section 306 constitutes an integral part of the 4R Act and represents the culmination of 15 years of congressional consideration of the problem of discriminatory state taxation of railroads. Congress determined that such discrimination "deprive[s] * * * a carrier of revenues needed in the performance of its services in interstate commerce." S. Rep. 91-630, 91st Cong., 1st Sess. 9 (1969).[1] As Congress found (H.R. Rep. 94-725, 94th Cong., 1st Sess. 78 (1975)):

> [R]ailroads are over-taxed by at least $50 million each year. In view of the generally poor economic condition of the railroad industry and the effect such economic hardship is having on the ability of the industry to adequately serve

---

[1] Congress explained:

> Unfortunately, interstate carriers, especially railroads, are easy prey for State and local tax assessors. Railroads, oil pipelines, and other interstate carriers are nonvoting, often nonresident, targets for local taxation, and cannot easily remove their right-of-way and terminals.

S. Rep. 91-630, *supra*, at 3.

Although Section 306 was finally enacted in 1976, the materials in the extensive legislative history most relevant to the question presented in this case are found in the deliberations of the 91st Congress in 1969-1970.

> our national rail transportation needs, the Committee believes discriminatory property and "in lieu" taxation should be ended.

Section 306 was intended " 'to put an end to the widespread practice of treating for tax purposes the property of common and contract carriers on a different basis than other property in the same taxing district' " and "to eliminate the discriminatory tax practices weakening our national transportation system * * *" (S. Rep. 91-630, *supra*, at 2, 3). In the legislative history "the State of Kansas was repeatedly found by Congress to be one of the states discriminating in the assessment and taxation of railroad property." *Atchison, T. & S.F. Ry.* v. *Lennen*, 552 F. Supp. 1031, 1037 (D. Kan. 1982), aff'd in part and rev'd in part, Nos. 82-1873, 82-1878, 82-1891 (10th Cir. Apr. 27, 1984).

Section 306(1) declares that any action prohibited thereunder "constitute[s] an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce" (Pet. App. 37a). In brief, the statute forbids a state or political subdivision to (*ibid.*):

(a) assess railroad property at a value that bears a higher ratio to the true market value of such property than the ratio that the assessed value of all other commercial and industrial property in the assessment jurisdiction bears to the true market value of such commercial and industrial property; in other words, it requires that

$$\frac{\text{assessed value of railroad property}}{\text{true market value of railroad property}} = \frac{\text{assessed value of other property}}{\text{true market value of other property}}$$

(b) levy or collect a tax based on such an assessment

(c) levy or collect an ad valorem property tax on railroad transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the assessment jurisdiction, or

(d) impose any other tax that results in discriminatory treatment of a railroad common carrier.

In addition, Section 306(2)(d) provides that the burden of proof on the issues "of assessed value and true market value" shall be "that declared by applicable State law" (*id.* at 38a). The statute also provides that the ratio of assessed to true market value of commercial and industrial property in the assessment jurisdiction may be established through a sales assessment ratio study (Section 306(2)(e), Pet. App. 38a), which uses the arm's-length sales price to ascertain the true market value for a statistical sample of properties that have been sold; furthermore, if such a study does not establish the necessary ratio for commercial and industrial property to the satisfaction of the court, the court shall use the ratio of assessed to true market value for *all* other property in the jurisdiction (rather than only commercial and industrial property) that is subject to a property tax levy (*ibid.*). See S. Rep. 91-630, *supra*, at 26-27; *Clinchfield R.R.* v. *Lynch*, 700 F.2d 126, 129 & n.4, 133 n.11 (4th Cir. 1983); *Atchison, T. & S.F. Ry.* v. *Lennen*, 552 F. Supp. at 1040, 1047-1048. Finally, a court may not grant relief under Section 306 unless the ratio of assessed to true market value for railroad property exceeds the comparable ratio for other property by at least five percent (Section 306(2)(c), Pet. App. 38a).

As the court of appeals correctly recognized (Pet. App. 4a), Section 306 prohibits both de jure and de

facto discrimination.[2] De jure discrimination arises if state law taxes railroads at a higher tax rate than is applicable to commercial and industrial property in the state (see Section 306(1)(c), Pet. App. 37a) or assesses railroad property at a different assessment rate than other property. De facto discrimination, on the other hand, occurs where state law, although not specifically establishing different tax or assessment rates, results by its operation in discriminatory treatment of railroad property. See *Atchison, T. & S.F. Ry.* v. *Lennen*, 552 F. Supp. at 1039 & n.10; *Clinchfield R.R.* v. *Lynch*, 527 F. Supp. 784, 785 n.5 (E.D. N.C. 1981). As the court of appeals explained (Pet. App. 4a), "[t]he most common form of de facto discrimination" is to apply the tax rate "to a value less than the true market value of other commercial and industrial property while applying it to the full true market value of rail property"; thus, this type of de facto discrimination involves the undervaluation of non-rail property and was termed by the courts below as the issue of "equalization relief." In addition, de facto discrimination against railroads can exist when their property is assessed "at a value higher than its true market value" (*ibid.*); this claim of overvaluation, which is at issue in the present case, was referred to below as the issue of "valuation relief."

2. a. Petitioner railroads brought this action in the United States District Court for the District of

---

[2] See also *Southern Ry.* v. *State Board of Equalization*, 715 F.2d 522, 528 (11th Cir. 1983), cert. denied, No. 83-886 (Mar. 19, 1984); *Alabama Great Southern R.R.* v. *Eagerton*, 633 F.2d 1036, 1040 (11th Cir. 1981); *Ogilvie* v. *State Board of Equalization*, 657 F.2d 204, 210 (8th Cir.), cert. denied, 454 U.S. 1086 (1981); *Clinchfield R.R.* v. *Lynch*, 527 F. Supp. 784, 785 (E.D.N.C. 1981).

Kansas to enjoin the collection by respondent Kansas officials of the 1982 ad valorem tax from the railroads.[3] Petitioners raised two issues of de facto discrimination under Section 306.[4] First, they contended that, even accepting the State's determination of true market value for their property, the ratio of assessed value to true market value for railroad property exceeded the ratio for all other commercial and industrial property in Kansas as determined by a sales assessment ratio study.[5] Based on the stipulation of the parties, the district court held that this equalization issue was controlled by the court's prior decision in another case challenging the Kansas tax for the 1980 and 1981 tax years (see Pet. App. 10a n.2, 12a),[6] and it accordingly entered a preliminary injunction in favor of petitioners on their equalization claim. That ruling was not appealed by respondents (see Pet. App. 3a) and is not at issue in this petition.

Second, petitioners argued that respondents had violated Section 306 by valuing their railroad property for ad valorem tax purposes at more than actual "true market value." After holding a three-day hearing, the district court rejected this valuation claim and denied petitioners' request for a preliminary injunction (Pet. App. 13a-27a). The court found that Section 306 was designed to provide equalization re-

---

[3] The Kansas tax system is described in *Atchison, T. & S.F. Ry.* v. *Lennen*, 552 F. Supp. at 1035-1036.

[4] Petitioners asserted no claim of de jure discrimination.

[5] This contention also was raised by five other railroads that were plaintiffs in the district court but are not petitioners here (Pet. App. 9a-11a).

[6] See *Atchison, T. & S.F. Ry.* v. *Lennen*, 552 F. Supp. 1031 (D. Kan. 1982), aff'd in part and rev'd in part, Nos. 82-1873, 82-1878, 82-1891 (10th Cir. Apr. 27, 1984).

lief for railroads "from discriminatory taxes through improper assessments or rates" (*id.* at 22a), but that "[d]iscriminatory valuation of the railroads * * * was not the problem that Congress sought to remedy in the passage of Section 306" (*id.* at 21a-22a). In the court's view, "Congress did not intend to place the burden on the federal courts * * * to review and determine the correctness of the valuation procedures and the actual valuation results for the railroads by each state assessing agency. * * * We simply do not believe that Congress intended for the federal courts to become involved in establishing new or better procedures for the states in the valuing of railroads" (*id.* at 21a-22a). Thus, the court concluded that Section 306, rather than requiring a district court to determine the issue of market value, contemplated the use of the valuation established by the state, and therefore "the issue of the appropriate 'true market value' of a railroad is generally not to be an issue in a Section 306 case" (*id.* at 22a).

The district court recognized "an exception to th[is] general rule that Congress did not intend the federal courts to get involved in valuation problems in Section 306 cases" (Pet. App. 24a). It concluded that "a court, under the equity power vested in the federal courts by Congress under Section 306, could examine the valuation established by a state where a railroad has shown that a state overvalued its property in retaliation for past relief accorded under Section 306" (*ibid.*). However, finding respondents' explanations for the valuations "to be credible," the court ruled that petitioners "have failed to adequately demonstrate any retaliation by [respondents] in their 1982 valuations" (*id.* at 27a).

Finally, the district court, in the alternative, rejected petitioners' contention that their property had

been overvalued at all (Pet. App. 27a). The court stated that "even if we were to consider simply the issue of overvaluation, we do not find that [petitioners] demonstrated reasonable cause to believe that [respondents], under the standards provided under Kansas law, overvalued [petitioners'] property in 1982" (*ibid.*). See also *id.* at 32a ("even assuming that the court could consider an ordinary overvaluation case under Section 306, we do not find that [petitioners] have shown that [respondents] overvalued their property under the guidelines established by Kansas law").

b. The court of appeals affirmed the district court's denial of a preliminary injunction on the valuation issue (Pet. App. 1a-7a). Although finding "plausible" (*id.* at 4a) petitioners' contention that a district court in a case alleging overvaluation should determine the true market value of the railroad property, the court believed that that is not "the proper interpretation" of Section 306 (*ibid.*). The court concluded that Section 306 was not "intended to provide relief from every form of de facto discrimination" (*ibid.*) and that "equalization, not valuation, relief was intended to be made available to the railroads" (*id.* at 5a). The court expressed concern that a contrary construction would enable the railroads to

> challenge the manner in which state assessment officials arrived at the fair market value of their property in federal court on a yearly basis. Such a rule would impose significant burdens on district courts and would substantially thwart the tax collection process of states and their subdivisions. Absent a specific direct[ive] from Congress, we are unwilling to infer that it intended district courts to sit as state tax assessment boards for railroad property.

Id. at 6a. Accordingly, the court held that "the valuation relief sought by [petitioners] is not provided by § 306" (*id.* at 4a).

The court of appeals acknowledged an exception to this construction that would authorize valuation relief to be granted. It held that a valuation "suit can be maintained whenever a railroad can make a strong showing of a purposeful overvaluation of a particular railroad's property with discriminatory intent, whether or not the overvaluation was made in retaliation for other litigation" (Pet. App. 6a). Emphasizing that "a strong prima facie case of retaliation or intentional discrimination must be made" (*ibid.*), the court examined the record and the findings of the district court and concluded that petitioners "did not make a sufficient showing of discriminatory overvaluation" (*ibid.*).

ARGUMENT

For the reasons stated below, we submit that the court of appeals erred in holding that a railroad must show purposeful overvaluation with discriminatory intent in order to obtain valuation relief under Section 306. In our view, however, that error of statutory interpretation does not warrant further review in this case. Accordingly, the petition for a writ of certiorari should be denied.

1. The court of appeals held that, in the absence of purposeful overvaluation with discriminatory intent, Section 306 does not prohibit a state's overvaluation of railroad property for ad valorem tax purposes. In effect, by precluding challenges to discriminatory taxation based on overvaluation of railroad property unless improper intent is shown, the court of appeals has treated the state's determination of value to be conclusive on the question of what is the

"true market value" of the property under Section 306. Such a construction is inconsistent with the statute.

On its face Section 306 refers to the "true market value" (Pet. App. 37a) of railroad property and makes that factor an integral element of the statutory test for discriminatory taxation. Nothing in the text or structure of the statute suggests in the least that, contrary to usual litigation procedures, a district court would be barred from determining all controverted issues of fact material to the controlling legal standard and instead must accept as true the state's determination of value even though it is contested by the railroad. Thus, we believe the normal presumption is that the issue of true market value, like other factual issues, would be open to dispute and proof in litigation under Section 306. Furthermore, this conclusion is confirmed by the language of Section 306(2)(d), which expressly provides that "the burden of proof with respect to the determination of assessed value and *true market value* shall be that declared by applicable State law" (Pet. App. 38a (emphasis added)). By this reference Congress clearly indicated its understanding that the question of value would be subject to litigation in cases under Section 306.

This construction is also supported by the purposes of Section 306. As discussed above (see pages 2-3, *supra*), Congress enacted the statute to end the pervasive and longstanding practice of discriminatory taxation of railroads. Given the important remedial objective of the legislation, it is implausible to assert, as the court of appeals did (Pet. App. 4a), that Section 306 was not "intended to provide relief from every form of de facto discrimination." See also cases cited in note 2, *supra*.

The court of appeals' holding would frustrate the purposes of the statute and lead to irrational consequences that Congress could not have intended. As the court of appeals recognized (Pet. App. 4a), Section 306 is clearly applicable to equalization claims of de facto discrimination. Equalization claims arise where a state undervalues commercial and industrial property, so that the ratio between the assessed and true market value of such property is less than the corresponding ratio for rail property. In that situation, Section 306 plainly has been violated. However, precisely the same discriminatory result can be achieved by overvaluing railroad property in relation to its true market value—the very valuation claim raised in this case and rejected as a matter of law by the court of appeals. In both instances the effect of the state tax is to discriminate against railroads. In light of the 15-year effort that led to the enactment of Section 306 and the significant remedial policies served by the legislation, we do not think that Congress could have intended to exclude valuation claims of de facto discrimination and thereby allow states a ready means to evade the statutory strictures.

The legislative history also indicates that Congress did not simply accept and incorporate into Section 306 a state's valuation of rail property as the "true market value" of the property. For example, the Senate Committee on Commerce noted the inadequacies in state valuation practices and observed that railroads " 'are discriminated against as compared to other taxpayers in the same jurisdiction, due in large measure to outdated procedures (which are sometimes deliberately retained) for assessment of property.' " S. Rep. 91-630, 91st Cong., 1st Sess. 2 (1969) (citation omitted); see also *id.* at 18. In

view of such "outdated procedures" Congress surely would not have anticipated that the state's valuation would be conclusively deemed to be the "true market value" of rail property.

Furthermore, in discussing the term "true market value" (see S. Rep. 91-630, *supra*, at 10), the committee explained that "[t]rue market value is the *goal generally sought* by all tax assessors" (*id* at 25 (emphasis added)) and "provides *a single standard* against which all affected assessments must be measured" under the statute (*id.* at 26 (emphasis added)); see also *ibid.* (true market value is "the *generally accepted standard* for assessment purposes") (emphasis added). Thus, Congress understood that "true market value" is an objective economic concept that is generally the aim—although not necessarily the actual result—of state assessments. Once again, this congressional understanding rebuts the suggestion that the value of rail property should not be open to litigation under Section 306 even if the state's valuation does not in fact meet the "goal" of true market value.

Finally, the committee made clear that the statutory "standard * * * [of] 'true market value'" is "not a standard for determining value; *it is a standard to which values that have already been determined must be compared*" (S. Rep. 91-630, *supra*, at 26 (emphasis added)). Thus, while Section 306 does not "require a State to change its assessment standards" (*id.* at 25), the value determined thereunder by the state "must be compared" to the "true market value" standard of Section 306. Accordingly, Section 306 cannot be understood simply to adopt the state's valuation as the "true market value" of rail property and hence to foreclose judicial inquiry into the issue.

Objections to the court of appeals' exclusion of valuation claims from the scope of Section 306 are

not overcome by the court's "intent" exception to its general rule. There is nothing in the language, history, or purpose of Section 306 to suggest that the intent of state officials is the decisive issue or to justify disparate treatment of valuation and equalization claims. On the contrary, Section 306(1) specifically refers, not to intent, but to "action[s]", and makes it unlawful for a state "to commit any of the [enumerated] acts" (Pet. App. 37a); and the residual clause in Section 306(1)(d) is explicit in its prohibition of any "tax *which results in discriminatory treatment*" of a railroad (Pet. App. 37a (emphasis added)). Thus, the court of appeals' "intent" test "is a creature of judicial cloth, not legislative cloth" (*Weinberger* v. *Catholic Action*, 454 U.S. 139, 141 (1981)). Furthermore, questions of intent are often elusive and difficult of proof, and it would defeat Congress's remedial objective to read Section 306 to turn on such matters. Likewise, an "intent" standard would require extensive probing into and judicial scrutiny of the internal deliberations and decisions of state officials, which—quite contrary to the expressed goal of the court of appeals (see Pet. App. 5a-6a)—would both seriously complicate litigation under Section 306 and significantly intrude upon the governmental processes of the states. Cf. *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 & n.18 (1977). At least in the absence of a clear legislative policy choice entailing these costs—and, we repeat, there is *no* evidence to that effect in this case—such undesirable consequences should not be attributed to Congress or imposed through judicial inference.

We share the court of appeals' concern that the federal courts not be converted, by virtue of Section 306, into review boards for determining the correctness of

the states' annual assessments of railroad property values. But, rather than the "intent" approach devised by the court of appeals, it is the language, history, and purpose of the statute that should determine the proper role of the federal courts under Section 306. Plainly, *discrimination* against railroads is the focus of the Act. Thus, Section 306, as its title indicates, "prohibit[s] discriminatory tax treatment" of rail property (Pet. App. 37a), and declares unlawful, as "an unreasonable and unjust discrimination against * * * interstate commerce" (Section 306(1), Pet. App. 37a), a number of enumerated taxes as well as "any other tax which results in discriminatory treatment" of railroads (Section 306(1)(d), Pet. App. 37a). Similarly, the legislative history demonstrates that Section 306 "prohibits any state from discriminating between rail property and other similar commercial[] tax[] properties" (H.R. Rep. 94-725, 94th Cong., 1st Sess. 56 (1975); see also *id.* at 76, 77-78), and requires that railroads "receive equal treatment with other taxpayers" (S. Rep. 91-630, *supra*, at 6). "[T]he activity forbidden is unjust discrimination against interstate commerce; that is, against carriers engaged in interstate operations" (*id.* at 9; see also *id.* at 26).

In line with this animating purpose of Section 306 to prohibit discriminatory taxation of railroads, we submit that a valuation claim is cognizable under the statute if it is alleged and proven that the overvaluation constitutes discrimination against the railroad qua railroad. Thus Section 306 would apply to overvaluations that result from an assessment rule or methodology that—either on its face or as applied—systematically determines excessive values for rail property. On the other hand, if a railroad, like

any other state taxpayer, asserts only that the state made an error in reaching an excessively high value for its property, no relief for that overvaluation claim would be available under Section 306.[7] This construction would allow Section 306 to operate in the case of those overvaluations that threaten the central statutory purpose of eliminating discriminatory taxation of railroads; at the same time it would not turn the federal courts into administrative tax boards to review the correctness of each and every assessment of a railroad's property.[8]

---

[7] It will often be the case that, because the analysis of effects and consequences constitutes a principal means of proving intent (see, *e.g.*, *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 274-275, 278-280 (1979); *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. at 256), the outcome under the court of appeals' test and under our proposed standard will be the same. But there is a difference in principle and in litigation practice between an "intent" test (even if it may in a given case be satisfied by proof of results) and a "discrimination" test that makes the results of the state's tax system upon railroads the legal touchstone.

[8] We also note that other provisions in the Act serve to limit the involvement of federal courts in state tax matters. First, the effective date of Section 306 was postponed for three years in order to enable states to correct the discriminatory features of their tax systems. See Section 306(2)(b), Pet. App. 38a; S. Rep. 91-630, *supra*, at 15. In addition, Section 306(2)(c) provides that no relief may be granted unless the ratio of assessed value to true market value for rail property exceeds by at least five percent the corresponding ratio for all other commercial and industrial property in the jurisdiction. See Pet. App. 38a; S. Rep. 91-630, *supra*, at 13, 14-15, 22; S. Rep. 1483, 90th Cong., 2d Sess. 27 (1968) (individual views of Senator Cannon). Thus, minor deficiencies in a state's tax system, even though systematically discriminatory against railroads, are not grounds for relief. Finally, because the

2. Despite our disagreement with the holding of the court of appeals, we believe that further review in this case is not warranted. The question presented is one of statutory construction, and there is no conflict among the circuits on the issue. In these circumstances, the Court's customary standards for certiorari are not met.

Furthermore, this statutory issue is a novel one that has not yet been adequately considered by the courts. To our knowledge, litigation under Section 306 has generally involved either claims of de jure discrimination (see *Clinchfield R.R.* v. *Lynch*, 527 F. Supp. at 785 n.5) or, as petitioners acknowledge (Pet. 14), equalization claims based on the underassessment of commercial and industrial property. We are aware of no case other than the present one—and neither the courts below nor the parties have cited any—in which an overvaluation claim of de facto discrimination has been decided. Cf. *Southern Ry.* v. *State Board of Equalization*, 715 F.2d at 526 (noting but not addressing the issue). Given the variety of interpretations expressed in this case by the two lower courts, the parties, and ourselves, we believe it would be advisable for the issue to receive further consideration and analysis before being addressed by this Court.

Finally, this case does not seem well suited in any event for review of the issue. The district court found that petitioners had not demonstrated that

---

burden of proof under Section 306(2)(d) follows state law (Pet. App. 38a), it will generally be the obligation of the railroad to come forward to prove a violation of the statute; if the railroad cannot carry this burden, it will be entitled to no relief. See H.R. Rep. 94-725, 94th Cong., 1st Sess. 77-78 (1975); S. Rep. 91-630, *supra*, at 11-12, 15.

their property was in fact overvalued (Pet. App. 27a), and this alternative ruling provided a sufficient and independent basis for denying a preliminary injunction to petitioners. Although the court of appeals apparently did not reach this alternative ground (*id.* at 6a), it is doubtful that the result in this case would be altered even if petitioners prevailed on the question they have presented. At a minimum, the district court's findings suggest that the record here would not adequately illuminate the issue of overvaluation or inform the Court of the relevant considerations that arise with respect to excessive valuation of railroad property.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

RICHARD K. WILLARD
Acting Assistant Attorney General

PAUL M. BATOR
Deputy Solicitor General

MARK I. LEVY
Assistant to the Solicitor General

ANTHONY J. STEINMEYER
BARBARA C. BIDDLE
Attorneys

JIM J. MARQUEZ
General Counsel

KENNETH N. WEINSTEIN
Attorney
Department of Transportation

JOHN M. MASON
Chief Counsel

GRADY C. COTTEN, JR.
Attorney
Federal Railroad Administration

MAY 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1984 421823 825